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AUTHOR Swartz, Stanley L.; Mosley, William J.
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ABSTRACT

The survey of all 50 state departments of education (and the District of Columbia examined nondiscriminatory evaluation policy. The examination of state policy documents included both an analysis of regulatory language and implementation procedures. State adherence to Public Law 94-142 Protection in Evaluation Procedures (PEP) and the development of additional state procedures to ensure non-bias in the identification process were also reviewed. Results are presented in tabular form by state for such areas as: statement of nondiscriminatory evaluation intent, preplacement evaluation, evaluation procedures, administration of evaluation instruments in child's native language or communication mode, validity of measure for purpose used, administration by trained personnel, care that test measures ability rather than impaired skills, use of multiple criteria for program eligibility, evaluation by multidisciplinary team, and assessment in all areas related to suspected disability. It is concluded that states are not adequately implementing the provisions of PEP. For example, only 11 states have developed guidelines designed to implement the nondiscriminatory requirement. (DB)

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An Analysis of State Special Education Nondiscriminatory Evaluation Policy and Procedures

Stanley L. Swartz and William J. Mosley

Western Illinois University

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Abstract

Results of a national survey of special education nondiscriminatory evaluation policy that included both an analysis of regulatory language and implementation procedures are reported. State (N=51, including the District of Columbia) adherence to P.L. 94-142 Protection in Evaluation Procedures and the development of additional procedures to ensure nonbias in the identification process are reported.

Tne considerable diversity of the practices reported and their likely impact is discussed. Recommendations for policy development and needed professional response are made.

According to Jones (1988) "a crisis exists in the psychoeducational assessment of minority group students," (p.13). A number of studies on the misplacement and the overrepresentation of minority students in special education classes exist which document, in large part, the importance of the problem (Barnes, 1972, 1974; Epps, 1974; Garrison & Hammill, 1971; Green, 1972; Lennon, 1974; Mercer, 1971, 1973, 1975; Samuda, 1976; Sattler, 1973; Thorndike, 1971; Tucker, 1980; Williams, 1970, 1971, 1974). Additional concern comes from a number of court cases (Diana v. State Board of Education, 1973; Larry P. v. Riles, 1984; PASE v. Hannon, 1980). Given the crisis Jones writes about, we have attempted to determine the effect of legislation on this problem.

The Protection in Evaluation Procedures (Reg. 300.530-300.534) of P.L. 94-142, especially the section on nondiscriminatory assessments, represent an attempt to remedy this problem. These regulations are mandated by law and must be followed. However, the federal government leaves it to the states to decide the specific details of implementation. This paper is based on a recently completed study which was done to determine the extent to which state departments of education in each of the states and the District of Columbia have established procedures to ensure that the assessment of children to determine the existence of a handicap, and/or the need for special

education services is done in accordance with Sec. 615-5c of P.L. 94-142.

Section 615-5c requires the states to develop:

> Procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

Guidelines for Sec. 615-5c were published in the Federal Register (August 23, 1977) under the title "Education of Handicapped Children: Implementation of Part B of the Education of the Handicapped Act." The guidelines are listed below:

> Reg. 300.530 General.
>
> (a) Each state educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Regs. 300.530-300.534.
> (b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.
>
> Reg. 300.531 Preplacement evaluation.
>
> Before any action is taken with respect to the initial placement of a handicapped child in a special educational program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of Reg. 300.532.
>
> Reg. 300.532 Evaluation procedures.
>
> State and local educational agencies shall insure, at a minimum, that:
> (a) Tests and other evaluation materials:
> (1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so:
> (2) Have been validated for the specific purpose for which they are used; and
> (3) Are administered by trained personnel in conformance with the instructions provided by their producers;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;
(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);
(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and
(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.
(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

Reg. 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:
(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
(2) Insure that information obtained from all of these sources is documented and carefully considered;
(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the valuation data, and the placement options; and
(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in Regs. 300.550-300.554.
(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with Regs. 300.340-300.349 of Subpart C.

Reg. 300.534 Reevaluation.

Each State and local educational agency shall insure:
(a) That each handicapped child's individualized education program is reviewed in accordance with Regs. 300.340-300.349 of Subpart C, and
(b) That an evaluation of the child, based on procedures which meet the requirements under Reg. 300.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

Given the madate of these protection procedures, the following questions are of particular concern: 1) exactly what are state education agencies throughout the country presently doing to assure that testing and evaluation materials are selected and administered in a manner that is nondiscriminatory. 2) to what extent are processes and procedures in place to, for instance, determine a child's native language where indicated, 3) to what extent are multi-criterion assessment approaches required and, 4) are provisions for adaptive behavior assessment from the point of view of socio-cultural and/or racial or ethnic differences required? It was our purpose, in this study, to determine the impact of federal legislation that mandates nondiscriminatory assessment on the procedures established by state educational agencies.

Method

State departments of education in each of the 50 states and the District of Columbia were asked to provide copies of documents used to ensure nondiscriminatory evaluation of handicapped children in their state. Specifically requested were: 1) state statutes that require nondiscriminatory evaulation, 2) policy statements or regulations addressing this issue, and 3) nondiscriminatory evaluation procedures for use at the local level developed and/or disseminated by the state. Telephone requests for this information were made to state evaluation and compliance personnel in August, 1988 with follow-up calls made in September, 1988 to those who had not responded. Needs for clarification were made by telephone contact in October, 1988.

Analysis of common elements of state statutory language and policy statements or regulations was accomplished by comparing these to those of the federal (P.L. 94-142) Protection in Evaluation Procedures (PEP). Three-way consensus was reached using an independent review by one author and two research assistants. Procedures for local use or compliance review were also analyzed for common elements. Additionally, notable single state efforts were recorded and clustered separately.

Results

All states and the District of Columbia (N=51) responded to the request for nondiscriminatory evaluation information. These responses varied from states that adopted P.L. 94-142 language only to those who have developed specific policy statements and guidelines for the implementation of nondiscriminatory evaluation and procedures for compliance review of these efforts.

Statements of intent to conduct nondiscriminatory assessment of handicapped children are reported in Table 1. More than one half of the states (28, 55%) chose to use the federal language and reprinted this statement in whole or in substance in their statutes or regulations. Other states (20, 39%) developed a statement of their own declaring nondiscriminatory intent. Though most of these were minor variations of the federal language, some could have substantial impact. Connecticut, for example, states that their evaluation procedures shall be nondiscriminatory but does not refer to racial or cultural considerations. Georgia, on the other hand, indicates that their procedures will be "sensitive" to racial and cultural factors. Illinois expands their intent to include linguistically, culturally, racially, and sexually nondiscriminatory assessment. Only four states (Arizona, Arkansas, Indiana and New Jersey) provided no statement regarding nondiscriminatory assessment.

TABLE 1

STATES' NONDISCRIMINATORY EVALUATION INTENT AND USE
OF P.L. 94-142 EVALUATION PROCEDURES

	A L	A K	A Z	C R	C A	C O	D T	F E	G L	H A	I I	I D	I L	K N	K A	L S	M Y	M A	M E	M D	M A	M I	M N	M S	N O	N T	N E	N V	N H	N J	N M	N Y	O C	O D	O H	P K	R R	S A	S I	T C	T D	U N	V X	V T	W T	W A	W V	W I	W Y	D C	N	%
STATEMENT OF NONDISCRIMINATORY EVALUATION INTENT																																																				
P.L. 94-142	X	X		X	X		X		X		X	X		X		X			X		X	X		X	X	X	X	X	X	X	X		X		X	X	X	X	X		X					X		28	55
State developed						X		X	X		X		X		X	X	X	X		X			X	X								X									X	X					X	X	20	39
PREPLACEMENT EVALUATION	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	49	96
EVALUATION PROCEDURES (P.L. 94-142)																																																			
Administered in child's native language or communication mode	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	47	92
Validated for purpose used	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	48	94
Administered by trained personnel as specified by producers	X	X		X	X	X	X	X	X	X	X	X	X		X		X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	44	86
Assess education need not intelligence only				X	X	X	X	X	X	X	X	X	X		X	X			X	X	X			X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X			X	X		X	X	X	X	36	71
Insure test measures ability rather than impaired skills		X		X	X	X	X	X	X	X	X	X	X		X	X			X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	40	78
No single procedure used as criterion for program	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	44	86
Evaluation by multidisciplinary team including specialist	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	47	92
Assessed in all areas related to suspected disability	X	X		X	X			X	X		X	X	X		X	X	X		X		X			X	X	X	X	X	X		X	X	X		X	X	X		X		X	X		X	X	X	X	32	63

Table 1 also reports the extent to which states require a preplacement evaluation. All states except two (49, 96%) reported such a requirement. Kentucky and Nebraska specifically allow placement in a special education program prior to the completion of an evaluation or as part of the evaluation process. Kentucky states that a "trial placement" can be made for up to four months when their admissions and release committee shall review the placement. Nebraska authorizes a "temporary placement . . for the purpose of observation, or evaluation. . ."

Also summarized on Table 1 are the eight specific nondiscriminatory evaluation procedures. All states required at least some of these procedures for evaluations of handicapped children in their state. These included from high to low: 1) validated instruments (48, 94%), 2) native language/communication mode (47, 92%), 3) multidisciplinary team (47, 92%), 4) trained personnel as specified by producers (44, 86%), 5) no single procedure (44, 86%), 6) measure ability (40, 78%), 7) assess education need (36, 71%) and 8) assess all areas (32, 63%). Twenty-three states reported requiring all eight procedures and three (Colorado, Maryland and Texas) only required two.

Table 2 summarizes the specific information that must be considered in placement procedures as it is prescribed in the federal 94-142 regulations. States reporting required consideration of this information included: 1) aptitude and achievement tests (27, 53%), 2) teacher recommendations (21,

TABLE 2

STATES' USE OF P.L. 94-142 PLACEMENT PROCEDURES

PLACEMENT PROCEDURES	A L	A K	A Z	A R	C A	C O	C T	D E	F L	G A	H I	I D	I L	I N	I A	K S	K Y	L A	M E	M D	M A	M I	M N	M S	M O	M T	N E	N V	N H	N J	N M	N Y	N C	N D	O H	O K	O R	P A	R I	S C	S D	T N	T X	U T	V T	V A	W A	W V	W I	W Y	WD C	N	%
Aptitude and achievement tests	X	X	X		X				X		X			X		X	X			X			X				X				X				X					X									X	X		27	53
Teacher recommendations	X	X	X		X				X		X			X		X	X			X							X								X					X									X	X		21	41
Physical condition	X	X			X				X		X			X		X	X			X			X				X				X				X					X									X	X		28	55
Social or cultural background	X	X			X				X		X			X		X	X			X			X				X				X				X					X									X	X		25	49
Adaptive behavior	X	X	X		X				X		X			X		X	X			X			X				X				X				X					X									X	X		26	51
Documentation	X	X	X		X				X		X			X		X	X			X			X				X				X				X					X									X	X		51	100
Team and knowledgable person	X	X	X		X				X		X			X		X	X			X			X				X				X				X					X									X	X		50	98
Least restrictive environment	X	X	X		X				X		X			X		X	X			X			X				X				X				X					X									X	X		48	94
Individualized education program	X	X	X		X				X		X			X		X	X			X			X				X				X				X					X									X	X		50	98
REEVALUATION	X	X	X		X				X		X			X		X	X			X			X				X				X				X					X									X	X		46	90

41%), 3) physical condition (28, 55%), 4) social or cultural background (25, 49%), and 5) adaptive behavior (26, 51%). Ten states (Georgia, Iowa, Louisana, Nevada, New Jersey, Oklahoma, Pennsylvania, Tennessee, Wisconsin and the District of Columbia) require that adaptive behavior be measured in the home and/or community in addition to the school setting. Nineteen states (37%) did not reference these requirements, though some have been reported as having specific areas of consideration during the entire evaluation process.

The remaining requirements listed in the Protection in Evaluation Procedures are also specifically required in other parts of the regulations (see Table 2). These are almost universally listed in state statute or regulation. They include: 1) documentation (51, 100%), 2) team and person knowledgeable about the child (50, 98%), 3) least restrictive environment (48, 94%), and 4) individualized education program (50, 98%). In some cases these omissions may be requirements that are not clear in the documentation provided.

The three year reevaluation requirement was reported by all but five states (46, 90%) (Colorado, Delaware, Mississippi, North Carolina and Wisconsin). Though reevaluation can be initiated at any time, when indicated, Pennsylvania requires a reevaluation every two years.

Table 3 summarizes any procedures or requirements that are state developed and are by design nondiscriminatory procedures or might have the effect of being nondiscriminatory. Though it might be expected that states would develop extensive guidelines to implement the PEP, this was not found to be the case. Only eleven states have developed specific guidelines to implement the nondiscriminatory requirement. Alabama and Arkansas specify the modification or adaptation of tests. Florida requires verification that tests to be used are culturally valid for the student being evaluated. Maine and Louisiana require that evaluators compensate for differences when the child is from a group that was not adequately represented in the standardization group. Louisiana requires the use of the System of Multicultural Pluralistic Assessment (SOMPA) (Mercer, 1979) for measuring intelligence of children from minority groups. Minnesota requires that the evaluation team secure information from parents on functioning at home when cultural differences are apparent and California, Illinois and Massachusetts require that the evaluator have knowledge or understanding of the cultural or ethnic background of the child. Utah specifies that when testing and evaluation procedures have an adverse impact, additional or substitute materials must be used. Wisconsin requires that for every referral of a minority child, a member of that minority group shall be allowed input into the decision-making process. Eighteen states require an attempt to accommodate a child in the regular classroom before an evaluation is initiated. Though the

TABLE 3

STATE DEVELOPED EVALUATION PROCEDURES

	A L	A K	A Z	A R	C A	C O	C T	D E	F L	G A	H I	I D	I L	I N	K A	K S	L Y	M A	M E	M D	M A	M I	M N	M S	M O	N E	N V	N H	N J	N M	N Y	N C	N D	O H	O K	O R	P A	R I	S C	S D	T N	T X	U T	V T	V A	W A	W V	W I	W Y	D C	N	%
Additional nondiscriminatory procedures	X		X	X					X				X				X			X	X		X		X																X				X						11	22
Modify regular classroom	X			X		X								X	X		X		X	X		X		X			X			X														X	X	X			X	X			18	35
Procedures specific to non-English speaking		X		X		X			X		X		X				X				X						X		X																					X		13	25
Required case study components	X		X	X	X	X			X			X	X	X			X		X	X	X	X	X		X		X	X	X	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X		40	78
Specified evaluation personnel	X	X	X	X	X			X				X	X	X			X	X	X	X		X			X	X	X	X	X	X	X			X	X	X	X	X	X				X			X	X				33	65
Specified evaluation instruments	X			X													X								X																							X				7	14

intent of most of these procedures is clear, sufficient information regarding implementation of these procedures was not provided to be able to determine their likely impact.

Thirteen states (25%) have outlined specific procedures for evaluating non-English speaking children. Eight of these states (Arizona, California, Illinois, Kansas, Massachusetts, Michigan, New Mexico and Tennessee) require that the evaluator be fluent in the language of the child. Five from this group (Arizona, Kansas, Michigan, New Mexico and the District of Columbia) allow the use of an interpreter during evaluation. Arizona, Kansas and New Mexico suggest the use of non-verbal tests when language appropriate tests are not available. Two states (Hawaii and Rhode Island) have developed comprehensive procedures for evaluating and placing non-English speaking children. Hawaii has written guidelines that include; procedures for assessment of language proficiency, both English and native, determination of the appropriate language for evaluation, requirements for a bilingual staff, and determination of the role of language in the results obtained in the evaluation. Rhode Island also has a procedure for assessing language fluency and guidelines for specific data to be collected and the use of a special team for dealing with referrals of non-English speaking children.

Table 3 also summarizes state developed evaluation procedures that might have a nondiscriminatory effect. These

include: 1) required case study components (40, 78%), 2) specified evaluation personnel (33, 65%), and 3) specified evaluation instruments (7, 14%). States that prescribe a broad array of data during evaluation can by doing this assure the availability of multi-source information for decision-making. Though many states are only specifying the role of the school psychologist, some have indicated the appropriate role for other professional groups. Most frequently specified tests to be used were individually administered intelligence tests. Only Louisiana, requiring the use of the SOMPA, required the use of a test designed to be nondiscriminatory. Other tests were prescribed but assurances that they would have a nondiscriminatory effect were unstated and probably unknown.

Discussion

The psychoeducational assessment of minority group students, especially with respect to evaluation for special class placement consideration, has been a critical problem for some time. Today, it continues to be a critical problem and a resolution to this problem, PEP not withstanding, does not appear to be forthcoming.

A summary view of the results suggests that while the federal government has left it to the states to operationalize and implement the provisions of PEP, the effort falls far short of the mark and is unlikely to affect the problem of discriminatory assessment. Though not a requirement, states could choose to adopt PEP language and make this either a statutory or a regulatory requirement. Such an action would represent both intent and a basic commitment to the provisions. Statements of intent to conduct nondiscriminatory assessment of the handicapped currently used show considerable variation. Slightly more than half of the states (28) use the language of P.L. 94-142 in expressing intent. Twenty states developed their own statement and four states have no statement of intent.

While it is interesting to note that virtually all of the states except two require a preplacement evaluation, it is surprising to find that two states allow special class placements prior to an evaluation. Regulation 121a.532 states that "before

any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of 121a.532."

Equally surprising is the fact that only eleven states have developed guidelines designed to implement the nondiscriminatory requirement. PEP is, at best, only a minimum or a basic outline of procedures that would contribute to nondiscriminatory assessment practices. Only the development of guidelines that specifically direct the efforts of those involved in the evaluation and placement process can provide any measure of assurance that nondiscriminatory evaluation will be accomplished. That these guidelines have not been developed at the state level is clear from the documentation provided. It would be difficult not to question the commitment to nonbiased procedures given the evidence provided.

It is interesting to note the outcome of a recent court decision in light of our findings on states responses to PEP regulations. In Marshall v. Georgia, a ruling was made that overrepresentation was not discriminatory if minority students were treated the same way as all others are treated as they proceed through the evaluation/placement process. The reasoning behind this ruling appears to be in total variance with the nondiscriminatory assessment regulation. PEP is particularly concerned with the possibility of misclassifying children from

low social status backgrounds, particularly those who are racially, ethnically, culturally or linguistically different (Mercer, 1979). The procedural safeguards found in PEP are designed to prevent misclassification. Marshall v. Georgia not only overlooks or ignores the PEP provisions but declares that no need exists for them. The concern here is not that steps be taken to ensure nondiscriminatory evaluation, but that all students be evaluated in exactly the same manner. This ruling appears to have the effect of legitimizing the monolithic approach to assessing children which is believed to be a major contributor to instances of erroneous classification.

It is not our intent to imply that the absence of PEP or comparable state procedures will necessarily result in biased evaluation and placement procedures. It is clear, however, that a statement of nondiscriminatory intent, procedures containing elements known to provide considerable safeguards in the evaluation process and specific implementation guidelines will, in large measure, provide some assurance that the process of nondiscrimination is in place. To this end, it should be expected that each state make this level or response at the very least.

While the results of this survey were somewhat unexpected, it may be that several factors have contributed to the lack of a broader response on the part of states. First, nondiscriminatory testing has been a major issue for more than two decades and

continues to be a very controversial area. Given the state of the art of nondiscriminatory assessment, there may be a reluctance on the part of states to attempt to operationalize processes and detail procedures in this area. Further, it may well be as Page (1979) suggests, that implementing P.L. 94-142, including the PEP regulations, requires a level of decision-making skill that not many possess.

Still, the limited attention to adaptive behavior given the critical importance of this concept to the placement of retarded children defies explanation. Adaptive behavior has been fairly well conceptualized and operationalized (Scott and Fisher, 1988). Dynamic assessment and its potential contribution to nondiscriminatory assessment has also been, for the most part, overlooked. This is also quite notable in that this approach has been found effective with disadvantaged and culturally or racially different children (Haywood, 1988). Dynamic assessment also has the added advantage of being well developed with available texts, training procedures and instruments that could provide needed procedural specificity (Feuerstein, Rand & Hoffman, 1979; Haywood, 1988; Hausman, 1988).

It is obvious that the need to address the problem of nondiscriminatory evaluation is a continuing one. Recent litigation suggests that the courts are willing to deal with these issues. Though such actions can have some positive effects, it is more likely that a professional response that

combines a commitment to nondiscrimination in the evaluation process with the necessary resources to accomplish this task will meet the goal of fairness in evaluation and appropriate education for children of all racial and cultural groups.

Authors: Stanley L. Swartz, Ph.D., and William J. Mosley, Ph.D., both Professors of Special Education, Western Illinois University, Macomb, Illinois 61455.

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